IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.685 OF 1989

The State of Maharashtra, through the Special Land Acqusition Officer, Metro Centre No.VIII, Panvel, District Raigad. ...Appellant

Versus

1. Baburao Hira Bhagat,
2. Padu Hira Bhagat,
3. Harishchandra Hira Bhagat,
4. Mahadeo Hira Bhagat,
5. Mathibai Balkrishna Gowari,
6. Krishnabai Gajanan Gowari,
7. Poshibai Goma Mundkar,
8. Barkubai Raghunath Bhingarkar. ..Respondents

Shri A.R.Patil, A.G.P for the Appellant.
Shri R.V.Pai with Shri S.M.Kamble for the Respondents.

AND

FIRST APPEAL NO.618 OF 1991
WITH
CROSS OBJECTION NO.20985 OF 1991

The State of Maharashtra, through the Special Land Acqusition Officer, Metro Centre No.VIII, Panvel, District Raigad. ...Appellant

Versus

1. Shri Tukaram Budhya Bhoir,
2. Shri Shankar Budhya Bhoir,
3. Smt Parvatibai Nathu Ghate,
4. Smt Zeprabai Mahadu Bhagat,
5. Smt Kashibai Maya Gowari,
6. Smt Hirubai Shankar Petkar,
7. Smt Tarabai Harishchandra Pardeshi, ..Respondents

Shri A.R.Patil, A.G.P for the Appellant.
Shri R.V.Pai with Shri S.M.Kamble for the Respondents.

CORAM : ABHAY S. OKA, J.
DATE : JANUARY 11, 2007.

ORAL JUDGMENT:

1. These Appeals can be conveniently disposed of by a common judgment. First Appeal No.685 of 1989 has been preferred by the Appellant State of Maharashtra for challenging the Judgment and Award dated 27th September, 1988 passed by the learned Civil Judge, Senior Division, Raigad at Alibag. By the said Judgment and Award, a reference under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act of 1894) has been partly allowed. The land subject matter of the acquisition is survey No.692, Hissa No.3(7) admeasuring 2 Ares situated at Panvel, Taluka Panvel, District Raigad. The land was notified under section 4 of the said Act of 1894 on 03rd February, 1970. An Award under section 11 of the said Act of 1894 was made on 20th August, 1986 by which market value at the rate of Rs.5.50/- per sq meter was offered to the Respondents. By the impugned Judgment and Award, the learned Trial Judge has enhanced the market value to Rs.16/- per sq meter.

2. First Appeal No.618 of 1991 takes exception to the Judgment and Award dated 19th January, 1990 passed by the learned 3rd Additional District Judge, Raigad at Alibag. By the impugned Judgment and Award, a reference made at the instance of the Respondents under section 18 of the said Act of 1894 has been partly allowed. The acquisition relates to land

bearing various survey numbers situated at Panvel, Taluka Panvel, District Raigad. The description of the said lands is as under:

Sr.No.	Sur.No.	Hissa No.	Area Sq. Meter
1.	642	2	3540
2.	645	1	2930
3.	645	2	2970
4.	647	3K	930
5.	651	4	230
6.	651	5	730
7.	652	3	1040
8.	654	6	200
9.	672	1	150
10.	672	3	190
11.	583	2	760
12.	584	6	580
13.	679	3	180
14.	680	3	580

The notification under section 4 of the said Act of 1894 in respect of the aforesaid lands was issued on 03rd February, 1970. The Award under section 11 of the said Act of 1894 was made on 20th December, 1985.

The Special Land Acquisition Officer offered market value at the rates between Rs.2/- to Rs.6/- per sq meter. By the impugned Judgment and Award, the Trial Court has awarded market value at the rate of Rs.18/- per sq meter in respect of the lands bearing Survey No.672 Hissa No.1 and Survey No.672 Hissa No.3. For lands bearing Survey No.583 Hissa No.2, Survey No.584 Hissa No.6, Survey No.679 Hissa No.3 and Survey No.680 Hissa No.3, market value has been fixed at the rate of Rs.16/- per sq meter. For rest of the lands, the market value has been fixed at the rate of Rs.14/- per sq meter.

3. The learned A.G.P appearing for the State of Maharashtra in both the Appeals has submitted that the market value fixed by the Trial Court in both the cases is extremely on the higher side. The learned A.G.P submitted that there is no evidence of comparable sale instances led by Respondents-claimants to justify the market value which is awarded by the reference Court.

4. Shri Pai appearing for the Respondents in both the Appeals has placed reliance on the decision of a Division Bench of this Court in the case of **Nama Padu Hudar & Ors. Vs. State of Maharashtra (First Appeal No.754 of 1986) and other connected Appeals decided by**

the Division Bench of this Court on 25th and 26th February, 1993. He pointed out that the said decision has attained finality and therefore, the market value of the acquired lands in both the Appeals will be governed by the said decision.

5. So far as the First Appeal No.685 of 1989 is concerned, Shri Pai urged that though the Respondents have not preferred any cross-appeal or cross-objection for seeking enhancement in market value, this is a fit case where power of this Court under Order XLI Rule 33 of the Code of Civil Procedure, 1908 (hereinafter referred to as the said Code) should be exercised and enhancement in market value be awarded in favour of the Respondents in accordance with decision of the Division Bench of this Court in the case of Nama Padu Hudar (supra). He submitted that under Rule 33 of Order XLI, this Court possesses sufficient power to pass a decree in favour of the Respondents which in law ought to have been passed even though no Appeal or cross-objection is filed by the Respondents.

6. I have considered the submissions made by the learned counsel appearing for the parties. It is not in dispute that the decision of the Division Bench of this Court in the case of Nama Padu Hudar (supra) has attained finality in the sense that Special Leave

Petition filed for challenging the said decision has been dismissed by the Apex Court. By the said decision, the Division Bench disposed of a group of Appeals arising out of references under section 18 of the said Act of 1894 relating to lands at Panvel and Kamothe in Taluka Panvel, District Raigad. The Division Bench dealt with the said lands in respect of which notification under section 4 of the said Act of 1894 was issued on 03rd February, 1970 for the same public purpose of development of satellite city of Navi Mumbai. The Division Bench considered the location of Panvel and Kamothe as well as other relevant factors and divided the lands subject matter of Appeals before it into five categories for fixing the market value depending upon distances of the acquired land from the Mumbai-Pune Highway or the Zilla Parishad Road or the Kamothe Gaothan. It will be also necessary to refer to a recent decision of the Apex Court dated **06th March, 2006 in Civil Appeal No.1557 of 2006 (Shantadevi Hariram Ruparel Vs. Special Land Acquisition Officer & Anr.)**. The Apex Court was dealing with an Appeal in respect of the land which was acquired for the same project under a similar notification dated 03rd February, 1970. The Apex Court approved the course adopted by the Division Bench in the case of Nama Padu Hudar (supra) of dividing lands into five categories and infact

directed that compensation should be fixed in respect of the land subject matter of the Appeal before it in accordance with the said decision of the Division Bench. In this view of the matter, the decision of the Division Bench in the case of Nama Padu Hudar (supra) is certainly relevant for decision of these Appeals.

7. So far as location of the lands which are subject matter of the First Appeal No.618 of 1991 is concerned, it will be necessary to refer to the evidence of Shri Jeevan Narayan Kulkarni (Exhibit 20) who was examined by the Respondents Claimants as an expert valuer. His evidence discloses that out of the acquired lands, Survey No.672 has a frontage on Mumbai-Pune Highway and other survey numbers are slightly away from the highway. In his evidence, the valuation report dated 07th April, 1989 prepared by him has been proved. In the said report (Exhibit 32), he has described the situation of the acquired lands. The report discloses that some of the acquired lands are abutting Mumbai-Pune highway and others are within a maximum distance of 800 meters from the highway. The perusal of the judgment of the Trial Court discloses that it was accepted that lands bearing Survey No.672, Hissa Nos.1 and 3 were adjacent to the highway and other lands were away from the highway.

This finding is not challenged in this Appeal. The report of the valuer was exhibited in the evidence and in the cross-examination of the valuer there is no challenge to that part of the report in which the distance of the acquired lands from the Mumbai-Pune highway has been set out. Thus, so far as land bearing Survey No.672, Hissa No.1 and land bearing Survey No.672, Hissa No.3 are concerned, the same appear to be abutting Mumbai-Pune national highway. Therefore, the said lands will fall in category I fixed by the Division Bench in the case of Nama Padu Hudar (supra). For the said category, market rate at Rs.25/- per sq meter has been fixed. As per the report none of the other acquired lands are abutting the highway, but the same are at a maximum distance of 800 meters from the Highway. Thus, the rest of the lands will fall in category II which covers lands which are situated up to a distance of 800 meters from the said highway. Hence, as per the said decision of the Division Bench, market value of Rs.23/- will have to be awarded in case of the said lands. Therefore, cross-objection will have to be partly allowed.

8. So far as First Appeal No.685 of 1989 is concerned, the market value fixed by the Trial Court is Rs.16/- per sq meter which is certainly less than the market value awarded under the decision of the

Division Bench in the case of Nama Padu Hudar (supra) to a similarly situated land. There cannot be any dispute about the submission of Shri Pai as regards powers of this Court under Rule 33, Order XLI of the said Code. The power is to pass a decree in favour of the Respondents though the Respondents may not have preferred any Appeal or cross-objection. However, a reference will have to be made to the decision of the Apex Court in the case of **Rameshwar Prasad and others Vs. Shambehari Lal Jagannath and another (A.I.R 1963 Supreme Court Page 1901)**. The Apex Court held that the power under Rule 33 of Order XLI of the said Code is discretionary and such a power is to be exercised in exceptional cases. In another decision in the case of **Chaya and others Vs. Bapusaheb and others [1994(2) Supreme Court Cases Page 41)** the Apex Court held that the power has to be exercised with care and caution.

9. In the present case, the Respondents could have filed cross-objection or could have preferred an Appeal. It cannot be said that the Respondents were not aware about the legal provisions. The law prescribes a period of limitation both for preferring an Appeal and for preferring a cross-objection. Court fee is required to be paid in both the cases on the claim for enhancement. Though this Appeal is on final hearing board for considerably long time, no attempt

was made to file cross-objection. It is obvious that the Respondents were not at all vigilant. Discretionary power under rule 33 of Order XLI cannot be exercised in favour of such litigants. Therefore, discretionary power under Rule 33 of Order XLI cannot be exercised in this case for enhancing the market value.

10. At this stage, it must be noted that the interest granted under section 28 of the said Act of 1894 is not in consonance with the provision of the said section. For the first year interest at the rate of 9% per annum is provided and thereafter interest at the rate of 15% per annum is provided. A claimant is entitled to the said statutory interest as a matter of right. He is not required to make payment of any court fees on the claim for statutory interest under the said Act of 1894. If such a statutory benefit is denied to the claimant, surely the power under Rule 33 of Order XLI can be exercised and the award can be corrected as the Respondents were entitled to the said benefit on the basis of the award which is already made by the Trial Court.

11. Hence, I pass the following order:

(i) First Appeal No.685 of 1989 is dismissed. In

exercise of power under Rule 33 of Order XLI of the Code of Civil Procedure, 1908, it is directed that the impugned Judgment and Award in Land Acquisition Reference No.224 of 1987 is modified to the extent that the Respondents will be entitled to interest at the rate of 9% and 15% respectively as provided in section 28 of the Land Acquisition Act, 1894. The reference Court will make necessary calculation of total amount payable to the Respondents within period of four months from the date of receipt of writ of this judgment. The Appellant State of Maharashtra will pay proportionate costs of this Appeal to the Respondents.

(ii) First Appeal No.618 of 1991 is dismissed. The Appellant will pay costs of the Appeal to the Respondents. Cross-objection (St) No.20985 of 1991 is partly allowed and the award made in Land Acquisition Reference No.385 of 1986 is modified. The market value of the acquired lands is fixed as under:

Sr. No.	Sur.No.	Hissa No.	Area Sq Mtr.	Rate of Market Value p.s.m.

1.	642	2	3540	23
2.	645	1	2930	23
3.	645	2	2970	23
4.	647	3K	930	23
5.	651	4	230	23
6.	651	5	730	23
7.	652	3	1040	23
8.	654	6	200	23
9.	672	1	150	25
10.	672	3	190	25
11.	583	2	760	23
12.	584	6	580	23
13.	679	3	180	23
14.	680	3	580	23
			15010	

(iii) In addition to the aforesaid market value, the Respondents-Claimants will be entitled to all statutory benefits under section 23(1-A), 23(2) and section 28 of the Land Acquisition Act, 1894. The Respondents will be entitled to proportionate costs of the reference as well as cross-objection from the State of Maharashtra.

(iv) The reference Court will calculate the total amount of compensation payable to the Respondents claimants in Land Acquisition Reference No.385 of 1986. This exercise shall be completed by the reference Court within a period of four months from the date of receipt of the writ of this judgment.

(v) Writ to be sent immediately.

JUDGE